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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

TIFFINIE SMITHE,

Plaintiff,

v.

WORLD WIDE VAN LINES, LLC, a
Delaware limited liability corporation; ABLE
MOVING, INC., a foreign corporation;
TRACIE TERMAN, an individual,

Defendants.

Case No.

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

- (1) Violation of Carmack Amendment
under 49 U.S.C. § 14706
- (2) Breach of Contract
- (3) Negligent Misrepresentation
- (4) Intentional Misrepresentation
- (5) Negligent Hiring
- (6) Conversion
- (7) Punitive Damages

For her complaint against Defendants, Plaintiff Tiffinie Smithe ("Smithe") complains and alleges as follows:

NATURE OF ACTION

This is an action for violation of 49 U.S.C. § 14706, which is commonly referred to as the Carmack Amendment, with pendent state law claims for breach of contract, negligent misrepresentation, intentional misrepresentation, conversion, negligent hiring and punitive damages. Plaintiff seeks damages, attorneys' fees and costs.

JURISDICTION

1
2 1. This Court has subject matter jurisdiction over this case pursuant to 28 U.S.C. §
3 1331. This Court has supplemental jurisdiction over Plaintiff's state law claims pursuant to 28
4 U.S.C. § 1367(a).

5 2. This Court has personal jurisdiction over Defendants based upon the following: (a)
6 Defendants offer their moving and shipping services to residents of the State of Nevada; (b)
7 Defendants operate web sites on the Internet that are accessible to residents of the State of Nevada;
8 and (c) Defendants committed tortious acts that they knew or should have known would cause
9 injury to Plaintiff in the State of Nevada.

10 3. Venue is proper in the United States District Court for the District of Nevada under
11 28 U.S.C. § 1391(b) and (c). Venue lies in the unofficial Southern Division of this Court.

PARTIES

12
13 4. Plaintiff Tiffinie Smithe is a resident of Las Vegas, Nevada.

14 5. Upon information and belief, Defendant World Wide Van Lines, LLC ("World
15 Wide") is a Delaware limited liability company.

16 6. Upon information and belief, Defendant Able Moving, Inc. ("Able Moving"), is an
17 Illinois corporation with its principle place of business in Chicago, Illinois.

18 7. Upon information and belief, Defendant Tracie Terman ("Terman") is a resident of
19 Chicago, Illinois and is an employee of Able Moving.

ALLEGATIONS COMMON TO ALL COUNTS

20
21 8. In the spring of 2010, Smithe, an aesthetician and makeup artist, made the decision
22 to move from Indiana to Las Vegas, Nevada.

23 9. On or about March 17, 2010, Smithe entered into a contract with World Wide to
24 transport the contents of her one bedroom apartment to her new home in Las Vegas. In addition to
25 the furniture, clothing and personal items contained in her apartment, the belongings shipped by
26 Smithe also included the equipment and supplies she used to make a living as an aesthetician and
27 makeup artist.
28

1 10. Smithe contacted the 1-800 number listed on World Wide's website and spoke with a
2 representative named "David." David informed Smithe that the average one bedroom apartment
3 weighs approximately 1600 lbs and quoted her the corresponding shipping cost of \$1,113.95.

4 11. David indicated that upon picking up her belongings from her residence in Indiana,
5 the truck drivers would take her items to a weigh station to determine the actual weight of the
6 shipment.

7 12. David informed Smithe that she could accompany the truck to the weigh station and
8 be present for the weighing.

9 13. David also informed Smithe that it should take no longer than 5 to 7 days to transport
10 her belongings from Indiana to Las Vegas.

11 14. Smithe agreed to the quoted price of approximately \$1,113.95. On or about April
12 26, 2010, Smithe paid World Wide a deposit of \$213.95, with the remaining \$900 balance due upon
13 delivery.

14 15. On or about May 12, 2010, at approximately 9:00 p.m., two men in an unmarked
15 moving truck arrived at Smithe's apartment in Indiana to pick up her belongings. Smithe naturally
16 assumed the two men were World Wide employees.

17 16. The two men placed numbered stickers on each of Smithe's boxes and furnishings
18 and provided her with a bill of lading listing each numbered item.

19 17. However, unbeknownst to Smithe, the drivers did not provide the required
20 description of each item that corresponded to the numbered label.

21 18. When Smithe indicated that she would like to follow the drivers to the weigh station
22 to witness the weighing of her items, she was informed that her items would not be weighed at a
23 nearby location. Rather, Smithe was told that her items could be weighed at any point during the
24 trip from Indiana to Las Vegas and that it was impossible for the drivers to know when or where her
25 items would be weighed.

26 19. Smithe was informed that she would be contacted by the drivers approximately one
27 day after her items were picked up in order to advise her of an estimated date of when her items
28 would be delivered.

1 20. Smithe never received any such call from the drivers.

2 21. Two days after her items were picked up in Indiana, Smithe began calling World
3 Wide to obtain more information on the expected delivery date.

4 22. Again, Smithe spoke to David, who stated that he would transfer Smithe to
5 “dispatch” so that she could obtain more information on when her things would be delivered to Las
6 Vegas.

7 23. After approximately six days of trying to reach someone in “dispatch,” Smithe
8 finally reached an individual named “Ingrid.”

9 24. At this point, Ingrid informed Smithe that her items weighed exactly 4,000 lbs, 2,400
10 *lbs more* than the 1,600 lbs originally estimated and upon which Smithe was quoted \$1,113.95 for
11 shipping. Ingrid told Smithe that the balance now due was \$2,595.00. In addition, Smithe was
12 informed that, instead of the 5-7 days she was told it would take to deliver her items, it could take
13 up to 30 days for her items to reach Las Vegas.

14 25. On the morning of June 5, 2010, *twenty-six days* after her items were picked up from
15 Indiana, Smithe received a voicemail message from the drivers of the moving van.

16 26. The drivers identified themselves as employees of “Able Moving.” This was the
17 first time that Smithe learned that World Wide was not the company that picked up her items and
18 transported them from Indiana to Las Vegas.

19 27. Several minutes later, Smithe received a second voicemail message from Terman, an
20 Able Moving representative, who stated that the drivers had been attempting to contact her for
21 several days and that if she did not immediately contact Able Moving, her items would be placed in
22 a storage facility.

23 28. Within five minutes of receiving Ms. Terman’s voicemail message, Smithe called
24 Ms. Terman back at the number provided in the voicemail message.

25 29. Curiously, Terman informed Smithe that she was too late and her items had already
26 been placed in a storage facility approximately 45 minutes outside of Las Vegas. Smithe stated that
27 she immediately returned Terman’s phone call and requested that her items be delivered to her
28 residence in Las Vegas as originally agreed.

1 30. Terman informed Smithe that she had forfeited delivery and now had to retrieve her
2 items from the storage facility.

3 31. Terman stated that Smithe would also be responsible for the storage fees, which at a
4 minimum, would be \$350.

5 32. When Smithe requested the location of the storage facility, Terman informed her that
6 she would not disclose the location of Smithe's belongings until Smithe wired the remaining \$2,595
7 balance to Terman and paid the storage fees.

8 33. Terman stated that upon receipt of the funds, she would mail Smithe a key to the
9 storage unit with the location information. Naturally, Smithe refused.

10 34. After numerous attempts to obtain the location of her belongings, Smithe sought
11 legal assistance. On or about June 21, 2010, counsel for Smithe sent a demand letter to World Wide
12 and Able Moving demanding that Smithe's items be immediately delivered to her in Las Vegas.

13 35. Neither Able Moving or World Wide responded to this correspondence.

14 36. On or about July 12, 2010, Smithe again spoke to Terman, who informed her that her
15 belongings were not in a storage facility near Las Vegas as she originally thought, but were now
16 located in a storage facility in Chicago, Illinois.

17 37. Terman reiterated that she would only provide Smithe with the location of the
18 storage facility and keys to the storage unit if Smithe met her on a specified street corner in Chicago
19 with certified funds for the remaining balance and storage fees.

20 38. Desperate to obtain her belongings, Smithe agreed.

21 39. Smithe then made arrangements to travel from Las Vegas to Chicago.

22 40. Prior to traveling to Chicago to meet Terman, Smithe contacted the Department of
23 Transportation, who agreed to accompany her to the meeting with Terman.

24 41. In July 2010, Smithe traveled to Chicago to meet with Terman along with two
25 Department of Transportation commerce officers. Upon meeting Terman, the officers confronted
26 Terman at which time she disclosed the location of Smithe's belongings.

42. Smithe, Terman and the two commerce officers traveled to Extra Space Management, Inc., where Smithe was finally able to see her belongings for the first time since they were picked up in Indiana on May 12, 2010.

43. Many of the boxes containing Smithe's items and that were sealed tight when she turned them over to the movers had been intentionally broken into and rummaged through. Other boxes were either missing the items inside or were missing altogether.

44. Numerous items that remained were severely damaged or destroyed. For example, the furniture in the unit, including a futon, dresser and drawers, and numerous storage bins were severely damaged and broken and it appeared as if someone took a crow bar to the drawers.

45. As Terman stood by and watched Smithe go through what remained of her belongings, she laughed and sneered at Smithe and yelled profanity at her. Upon leaving the storage facility, Terman sarcastically yelled "good luck getting anything out of me."

46. Upon information and belief, Able Moving never brought Smithe's items to Las Vegas, but instead drove them directly to Chicago, where Terman and her associates rummaged through each box and drawer and took what they wanted.

47. Then, with the intent to extort more than double the amount of moving fees from Smithe, Terman and Able Moving held the location of the items and the items themselves hostage.

48. As a result of Defendants' actions, Smithe has sustained a total loss of her personal belongings and aesthetician equipment and has suffered severe mental anguish and distress.

FIRST CLAIM FOR RELIEF

(Violation of 49 U.S.C. § 14701 *et seq.* – Against Able Moving)

49. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

50. On or about May 12, 2010, Smithe delivered the contents of her one bedroom apartment and the equipment and supplies she uses as an aesthetician and make-up artist to Able Moving in good condition.

51. The contents delivered to Able Moving were never delivered to Smithe in Las Vegas, Nevada as required under the bill of lading.

52. When Smithe finally learned of the exact location of her items, she was told that they were now in a storage facility located in Chicago, Illinois.

53. Upon information and belief, Smithe's belongings were never brought to Las Vegas, but were instead transported directly to the storage facility in Chicago, Illinois where they were held by Able Moving for ransom.

54. When Smithe finally obtained her items, what was remaining had been severely damaged and destroyed. Many items were completely missing and have never been returned to Smithe.

55. As a direct and proximate result of such conduct, Plaintiff has suffered a total loss of her belongings, for a total amount to be determined at the time of trial.

56. Able Moving's actions have caused Smithe to retain services of counsel and Smithe is entitled to an award of reasonable attorneys fees and costs incurred herein.

SECOND CLAIM FOR RELIEF
(Breach of Contract – Against World Wide)

57. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

58. Smithe and World Wide entered into a valid and existing contract whereby World Wide agreed to ship the contents of Smithe's one bedroom apartment from her apartment in Indiana to her new residence in Las Vegas, Nevada.

59. Smithe performed all of her obligations under the agreement.

60. World Wide breached its obligations under the agreement by failing to deliver the items to Smithe in Las Vegas as agreed.

61. As a direct and proximate result of such conduct, Plaintiff has suffered a total loss of her belongings, for a total amount to be determined at the time of trial.

62. World Wide's actions have caused Smithe to retain services of counsel and Smithe is entitled to an award of reasonable attorneys fees and costs incurred herein.

THIRD CLAIM FOR RELIEF
(Negligent Misrepresentation – Against World Wide)

63. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

64. World Wide, during the course of the negotiations and communications with Smithe leading up to her decision to utilize World Wide's services to ship her belongings from Indiana to Las Vegas, and in which World Wide had a pecuniary interest, failed to exercise reasonable care and competence in obtaining or communication information to Smithe regarding (i) the total weight of her items, (ii) her ability to be present for the weighing of her items, (iii) the total cost to ship her items to Las Vegas, (iv) the identify of the company that would be transporting her belongings to Las Vegas, and (v) the estimated time that it would take to transport her things from Indiana to Las Vegas.

65. Smithe justifiably relied on these representations in making her decision to utilize World Wide to ship her belongings to Las Vegas.

66. As a direct and proximate result of such conduct, Plaintiff has suffered and will continue to suffer monetary loss, including economic and consequential damages, for a total amount to be determined at the time of trial.

67. World Wide's actions have caused Smithe to retain services of counsel and Smithe is entitled to an award of reasonable attorneys fees and costs incurred herein.

FOURTH CLAIM FOR RELIEF
(Intentional Misrepresentation – Against World Wide)

68. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth herein.

69. World Wide made numerous false representations to Smithe, including but not limited to, quoting Smithe the price of \$1,113.95 to ship her items based on the average weight of a one bedroom apartment of 1,600 lbs., informing Smithe that she could be present for the weighing of her items, telling Smithe that it would take only 5-7 days for her items to be transported from

1 Indiana to Las Vegas, and telling Smithe that her items would be delivered directly to her new
2 residence in Las Vegas.

3 70. At the time these representations were made, World Wide knew or believed that
4 these representations were false.

5 71. Based upon these misrepresentations, World Wide intended for Smithe to engage
6 World Wide to transport her belongings from Indiana to Las Vegas.

7 72. As a direct and proximate result of World Wide's actions, Smithe has suffered, and
8 will continue to suffer damages, including but not limited to economic and consequential damages
9 in an amount to be determined at the time of trial.

10 73. World Wide's actions have caused Smithe to retain services of counsel and Smithe is
11 entitled to an award of reasonable attorneys fees and costs incurred herein.

12 **FIFTH CLAIM FOR RELIEF**
13 (Negligent Hiring – Against World Wide)

14 74. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth
15 herein.

16 75. In connection with its decision to utilize a third party company to transport Smithe's
17 belongings from Indiana to Las Vegas, World Wide owed Smithe a duty of care to conduct a
18 reasonable investigation and background check into Able Moving.

19 76. World Wide breached that duty by hiring Able Moving even though it knew or
20 should have known that Able Moving has a history of poor business practices and has had
21 numerous consumer complaints filed against it.

22 77. World Wide's breach caused Able Moving to take possession of Smithe's
23 belongings, after which Smithe's belongings were subsequently lost and/or destroyed as a result of
24 Able Moving's conduct.

25 78. Additionally, World Wide's breach directly resulted in Able Moving taking
26 possession of Smithe's belongings and holding those items hostage for a grossly inflated amount
27 charge.
28

1 79. As a direct and proximate result of World Wide's negligent hiring of Able Moving,
2 Smithe has suffered, and will continue to suffer damages, including but not limited to economic and
3 consequential damages in an amount to be determined at the time of trial.

4 80. World Wide's actions have caused Smithe to retain services of counsel and Smithe is
5 entitled to an award of reasonable attorneys fees and costs incurred herein.

6 **SIXTH CLAIM FOR RELIEF**

7 (Conversion – Against Terman)

8 81. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth
9 herein.

10 82. Terman wrongfully exercised a distinct act of dominion over Smithe's personal
11 property when she rummaged through Smithe's belongings and stole numerous items prior to
12 disclosing the whereabouts of the remaining items to Smithe.

13 83. Terman's actions were in derogation, exclusion or defiance of Smithe's title or rights
14 in her personal property.

15 84. As a direct and proximate result of Terman's actions, Smithe has suffered, and will
16 continue to suffer damages, including but not limited to economic and consequential damages in an
17 amount to be determined at the time of trial.

18 85. Terman's actions have caused Smithe to retain services of counsel and Smithe is
19 entitled to an award of reasonable attorneys fees and costs incurred herein.

20 **SEVENTH CLAIM FOR RELIEF**

21 (Punitive Damages – Against Terman)

22 86. Plaintiff incorporates the allegations in the preceding paragraphs as if fully set forth
23 herein.

24 87. Terman's actions were undertaken with a malicious and fraudulent intent to deprive
25 Smithe of her property in an attempt to extort exorbitant sums of money from Smithe.

26 88. Terman's actions were undertaken with a conscious disregard for the consequences
27 of such conduct and constitute a manifest disregard for Smithe's property, her mental and emotional
28 well-being and her ability to obtain work and carry on in her profession.

1 89. Terman's actions are so egregious as to justify an assessment of punitive and
2 exemplary damages pursuant to N.R.S. § 42.005.

3 90. Terman's actions have caused Smithe to retain services of counsel and Smithe is
4 entitled to an award of reasonable attorneys fees and costs incurred herein.

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, Plaintiff respectfully prays that the Court grant the following relief:

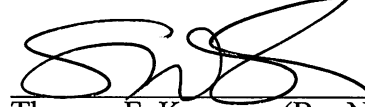
8 A. An award of compensatory, consequential, statutory, and punitive damages to
9 Plaintiff in an amount to be determined at trial;

10 B. An award of interest, costs and attorneys' fees incurred by Plaintiff in prosecuting
11 this action; and

12 C. All other relief to which Plaintiff is entitled.

13 DATED: November 21st, 2010.

14 GREENBERG TRAURIG, LLP

15 

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